

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ANITA ALBERTI,)	
)	
Plaintiff)	
)	
v.)	Civil No. 96-299-P-H
)	
NANCY HEWSON, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION ON DAMAGES

The plaintiff asserts claims for conversion and trespass against defendants Christopher Bernardin, Jeffery Knickers and Debbra Thompson in this action.¹ Default has been entered against these defendants, who have never appeared in this action. A damages hearing was held before me on January 23, 1998. The plaintiff was the sole testifying witness. The following are my recommended Findings of Fact and Conclusions of Law.

1. In December 1994 the plaintiff reported to police a theft of between \$29,000 and \$33,000 cash from her residence. In a statement to police dated January 18, 1995 the plaintiff stated that she had given \$11,000 of this money to her son as a loan.

2. Defendant Bernardin, a friend of the plaintiff's son and a close family friend whom the plaintiff trusted, admitted taking an aggregate of \$14,000 from the plaintiff's residence on two

¹ All claims raised in the complaint against four other defendants have been dismissed by stipulation pursuant to settlement.

occasions in October 1994.

3. Defendant Bernardin stated that he kept \$1,200 of this money and gave the rest to defendants Knikkers and Thompson.

4. Defendant Thompson admitted being present when Bernardin removed \$13,000 from the plaintiff's residence.

5. Defendant Thompson stated that defendant Knikkers received some of the \$13,000 from Bernardin and spent it on a car.

6. In a sworn statement to police, Doreen Carpentier stated that defendants Knikkers and Thompson told her that they had taken a total of \$11,500 from the plaintiff's house.

7. The complaint alleges that defendants Bernardin, Knikkers and Thompson caused the plaintiff to lose property in the amount of approximately \$25,000.

8. Pursuant to Fed. R. Civ. P. 54(c), a judgment by default is limited to the relief demanded in the complaint.

9. The plaintiff has requested an award of punitive damages. The plaintiff is not entitled to punitive damages as a matter of right against a defaulting defendant. She must prove her entitlement to punitive damages at the damages hearing. *Comdyne I, Inc. v. Corbin*, 908 F.2d 1142, 1152 (3d Cir. 1990). The plaintiff did not present evidence of actual malice, or of conduct so outrageous that malice may be implied, on the part of any of the defaulted defendants at the hearing.² As a result, she is not entitled to an award of such damages. *Tuttle v. Raymond*, 494 A.2d 1353, 1361 (Me. 1985).

² The argument of the plaintiff's attorney on the claim for punitive damages mentioned only defendant Bernardin. Any claim for punitive damages against Thompson and Knikkers may therefore be considered waived.

10. The plaintiff testified at the hearing that between \$29,000 and \$33,000 was taken from her residence. Her statement to the police that she advanced \$11,000 of this money to her son as a loan leaves a range of \$18,000 to \$22,000 that might have been taken by the defaulted defendants. Because the plaintiff herself was unsure that any more than \$29,000 was missing, I conclude that there is sufficient evidence to award damages against the defaulted defendants only in the amount of \$18,000.

11. The complaint asserts that the defaulted defendants are jointly and severally liable for the conversion of the plaintiff's property.

On the basis of the foregoing, I recommend that the plaintiff be awarded damages in the amount of \$18,000 against defendants Bernardin, Knickers and Thompson, jointly and severally, and that judgment be entered for the plaintiff against these defendants in the amount of \$18,000.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 27th day of January, 1998.

*David M. Cohen
United States Magistrate Judge*